

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KRISTOPHER MAHON,
ALEXANDRIA SPEARS, ABBIGALE SPEARS,
and AYDEN SPEARS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellant,

v

AMANDA SPEARS and KEVIN SPEARS,

Respondents-Appellees.

UNPUBLISHED

August 28, 2007

No. 276118

Macomb Circuit Court

Family Division

LC No. 03-5488211-NA

Before: Owens, P.J., and White and Murray, JJ.

PER CURIAM.

Petitioner appeals by delayed leave granted from the trial court's order denying its petition to terminate respondents' parental rights to the minor children under MCL 712A.19b(3)(b)(ii), (b)(iii), (c)(i), (g), and (j).¹ Although we might have come to different factual and legal conclusions had we been in the trial court judge's position, under our standard of review, we reluctantly affirm.

We review the trial court's factual findings in a termination proceeding for clear error. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made. *Miller, supra* at 337; *Conley, supra* at 42. Consistent with this standard, we defer to the trial court's assessment of the credibility of witnesses who appeared before it. MCR 2.613(C); *Miller, supra* at 337. Once a statutory ground for termination is established by clear and convincing evidence, the court must order termination of parental rights, unless it finds that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*,

¹ Petitioner also requested termination under MCL 712A.19b(3)(c)(ii), but does not challenge the trial court's decision to deny termination under that statutory ground.

462 Mich 341, 354; 612 NW2d 407 (2000). “The burden of proof is on the person seeking by court order to terminate the rights of the respondent over a child.” MCR 3.977(A)(3).

Petitioner asserts that the trial court clearly erred in finding that termination was not warranted under MCL 712A.19b(3)(b)(ii), (b)(iii), and (j), because allegations of sexual abuse had been made against respondent-father. Petitioner concedes that “there was not any testimony presented which referenced the abuse of the natural father to the children, namely sexual abuse[.]” Petitioner instead relies on a report admitted at a prior hearing, in which a therapist expressed his belief in the allegations. The trial court indicated that it was aware of the report, but noted that the therapist did not have the benefit of other information that was available to the court. The court stated that it had conducted an evidentiary hearing with respect to allegations involving one of the children and determined that the allegations were unsubstantiated and lacked merit. The court noted that allegations involving another child also were never substantiated, and that the child in question, when assessed, never alleged any abuse by respondent-father. The trial court did not clearly err in finding that no credible evidence of sexual abuse had been presented. Accordingly, the court did not clearly err when it concluded that clear and convincing evidence was not presented to warrant termination of respondents’ parental rights under MCL 712A.19b(3)(b)(ii), (b)(iii), or (j).

The trial court also did not clearly err when it concluded that clear and convincing evidence was not presented to warrant termination under MCL 712A.19b(3)(c)(i) or (g). It is undisputed that more than 182 days had elapsed since the initial dispositional order was entered. In fact, the older children had been in care for over three years.

The conditions that led to the adjudication in 2003 included a neglectful environment, respondent-mother’s mental state, unemployment, and domestic abuse. After adjudication, respondents obtained psychological assessments, completed a mental health workshop and domestic abuse workshops, participated in individual and family therapy, and obtained suitable housing and employment. The court found that respondents made progress in their relationship and parenting skills, in controlling domestic violence, and in their ability to care for their children. The trial court’s findings are supported by the testimony of a family therapist, who indicated that respondents were cooperative, demonstrated appropriate parenting behavior and effective management of the children during visits, and had integrated general knowledge regarding acceptable parenting behavior. Further, respondent-father’s therapist, who was selected by petitioner, testified that respondent-father had made gains.

The trial court also found that the lack of a parent-child relationship could be attributed to the limited time respondents could spend with their children over the past years. This finding is supported by the testimony of the family therapist, who stated that the children’s reluctance and acting-out behaviors could be attributed to the length of separation between the children and respondents. Accordingly, although we question whether the parents have benefited sufficiently from the services in which they have participated in order to parent their children in a non-neglectful and non-abusive manner, the court did not clearly err by determining that termination was not warranted under MCL 712A.19b(3)(c)(i) or (g).

Affirmed.

/s/ Donald S. Owens

/s/ Helene N. White

/s/ Christopher M. Murray